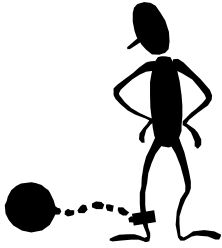


Progressive Discipline



Progressive discipline is a process of applying and documenting disciplinary actions progressing from less serious to more serious, depending on the history of the employee and the severity of the offense. It is a means of minimizing your exposure to litigation and should be designed to correct a problem in a positive, helpful manner whenever possible.

It's important that you have a thoroughly documented business-related reason when you terminate an individual's employment for cause (unless during an initial probationary period). Your documentation should demonstrate "good cause" that would convince a judge or juror.

There is no substitute for hiring the right person in the first place. However, unsatisfactory performance can occur at any time to any employer and for many reasons. You have already invested a great deal of time and money in your employees. Assisting them to correct/change the problem costs far less than recruiting and training new employees.

Key Elements of Progressive Discipline

- Consult any bargaining agreements for language on discipline or discharge *before* developing a progressive discipline policy and *before* taking disciplinary action.
- Make sure all employees receive a copy of your company's rules and policies.
- Clearly communicate job duties and expectations to all employees. Regular performance evaluations can help maintain and update these communications.
- Begin discipline as soon as the performance problem or behavior occurs.
- Apply policies consistently and fairly. (Most grievances and litigation result when individuals feel they have been treated unfairly.)
- Practice good faith efforts. Investigate thoroughly before making judgments. Due process includes informing the employee what the action is and why it is being taken as well as making sure the employee has the opportunity to respond to the questioned behavior or problem.
- Consider Employee Assistance Programs, if available.
- Document all disciplinary actions—both informal and formal.
- Prepare for disciplinary interviews in advance.
- Conduct disciplinary meetings in private.
- State whether the discipline is formal or informal and give the employee a notice of grievance rights (if applicable).

Informal Disciplinary Actions

You may repeat informal disciplinary actions as often as you choose as long as you follow all provisions of your personnel policies and you apply them consistently. You need to consider the seriousness of the offense and the time frame in which the repetition occur.

Corrective Counseling—Constructive actions taken to improve unsatisfactory employee behavior or performance in a positive, non-threatening manner prior to or during the administration of formal disciplinary action. These actions may include, but are not limited to, coaching, counseling and training.

Oral Warning—Given as a first step or when corrective counseling has not succeeded in correcting the problem.

Document all disciplinary actions—both informal and formal!

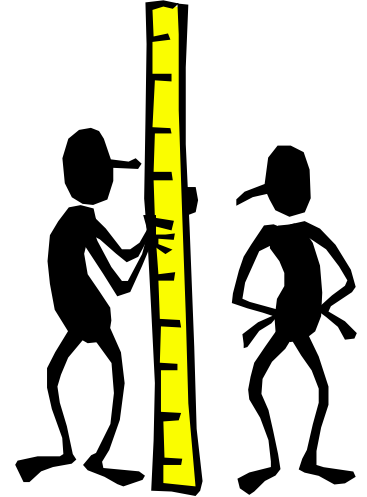
Formal Disciplinary Actions

Formal disciplinary actions become necessary when informal actions have been unsuccessful. It is at this stage that outlining specific expectations and the consequences of failure to improve become even more crucial. More direct supervision or monitoring, as well as coaching or training, may be necessary. In some cases, such as theft, fraud or assault, appropriate discipline may begin at a higher or formal level. Consult your policies and consider the following: type of offense, relevant policy or rule, circumstances, employee and past treatment of similar problems.

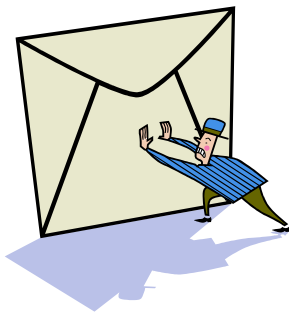
DISCHARGE is the final step of terminating an individual's employment. Supervisors should be given the authority to suspend employees for short periods of time but not to terminate on the spot. This is due to the potential penalties associated with a wrongful discharge claim if an impartial investigation and required procedures are not followed.

1. Consider whether all other options have been explored and/or taken.
2. Consult your human resources department or legal counsel to ensure that you have followed all necessary steps and that the wording in your discharge letter is appropriate.
3. Review the Disciplinary Checklist (found later in this section).
4. Have the final paycheck ready. Montana Wage and Hour Laws

require that "if an employee is discharged for cause, the employer must pay the employee immediately." **Unless** the employer has a written personnel policy governing the employment, that extends the time for payment of final wages to the employee's next regular payday for the pay period or to 15 days from separation, whichever occurs first.



A LETTER OF DISCHARGE should contain the following:



- 1) A clear statement of discharge
- 2) The reason (just cause) for the action
- 3) The documentation of just cause
- 4) A notice of grievance or other due process rights
- 5) An attached copy of the grievance policy (if applicable)

SUSPENSIONS WITHOUT PAY are generally utilized when severe infractions of policies occur and/or when previous disciplinary steps have not been successful. It's often a last chance for employees to review their desires to conform to requirements. It is not generally an effective tool when dealing with a lack of skills. Suspensions are generally issued in writing during a disciplinary interview. If a suspension is issued orally due to a severe infraction, it should be stated very specifically that the employee is being suspended without pay and is to leave immediately. Such action must be followed up in writing immediately.

DISCIPLINARY DEMOTION is a formal disciplinary action where the employee is removed from his/her current position and placed in a position with reduced responsibilities and pay. It is usually used as a means of correcting work performance problems—not behavioral problems.

Warning Checklist†



WRITTEN WARNINGS should include the following:

A, B, C, D, E, F

WRITTEN SUSPENSION should include the following:

A, B, C, D, E, F

WRITTEN DISCIPLINARY DEMOTION should include the following:

A, B, E, F

- A.** The reason for the action (what the problem is, specific dates, times, previous discipline attempts, etc.)
- B.** A statement of the disciplinary action being taken and why
- C.** Specific improvement or correction required (specify a time frame and follow-up)
- D.** A statement of the consequences of failure to improve work performance or correct behavior
- E.** Notice of grievance rights (if any)
- F.** A signature of the employee acknowledging that he/she had the opportunity to review and comment on the action (not necessarily that he/she agrees with the action being taken) and that he/she has received a written copy of the disciplinary action being taken

Progressive Discipline Steps

At all stages of progressive discipline, it is critical to clearly identify...

WHAT the problem is.

WHY it is a problem.

WHAT performance or behavior you want instead.

WHY it is important the performance/behavior improve.

(Note: At formal disciplinary stages, the last “why” should also include the consequences, such as suspensions, demotions, terminations, etc., as appropriate.)

Documentation Tips

ALWAYS BE SPECIFIC AND FACTUAL.

Record specific details such as times, dates, names, places, description of the problem, a brief synopsis of both parties’ discussion as well as the agreed upon solution and a date and time for a planned follow-up. General statements (such as frequently late for work, bad attitude or poor customer service) are difficult to substantiate if challenged.

DESCRIBE IN A NARRATIVE FORM THE EMPLOYEE’S FAULTS IN A FACTUAL MANNER.

If conclusions are used, they should be supported by a specific factual foundation. Example: Don’t say John was intoxicated but rather record—John returned from lunch at 1:30 p.m. (which was 30 minutes late) on August 21, 1997. His speech was slurred and he staggered when he walked. He fell into the file cabinets twice. I was able to smell a strong odor of alcohol on his breath.



Disciplinary Checklist



The personnel file should clearly support and justify the proposed disciplinary action without resorting to outside sources for additional information. The file should be sufficient in itself. Ideally, a stranger reading the record will conclude that the employee deserves whatever discipline is being proposed.

Before imposing disciplinary action, such as termination, suspension without pay or demotion, ask yourself the following questions:

- ✓ Has all critical information been reduced to writing and placed in the personnel file?
- ✓ Is the nature of the employee's misconduct or lack of performance clearly described in a specific, factual manner?
- ✓ Was the employee clearly informed of required standards of behavior and performance?
- ✓ Does the record progress from mild, early warnings to more serious, comprehensive documents?
- ✓ Was the employee given adequate assistance and direction by management?
- ✓ Has the employee had reasonable time and a fair opportunity to improve?
- ✓ Is the lack of performance or misconduct sufficiently persistent and serious to warrant the proposed disciplinary action?
- ✓ Have all the statutory and procedural requirements been met, such as promptly filing disciplinary documents?
- ✓ Has the employee been given fair warning of the consequences of continued performance problems or misbehavior?

If you can answer "yes" to all of the above questions based on documents contained in the personnel file, you will have a well-documented disciplinary action.